



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Instrument Associates--Reconsideration

File: B-252884.2

Date: August 19, 1993

Michael L. Soshnick, Esq., and A. James Temsamani, Esq., for the protester.

Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates argument made by protester and previously considered by General Accounting Office.

DECISION

Instrument Associates requests reconsideration of our April 5, 1993, dismissal of its protest under Sale No. 31-3351 conducted by the Defense Logistics Agency (DLA). We dismissed the protest as untimely because Instrument failed to file the protest with our Office within 10 working days after the protester initially received knowledge of adverse agency action on its agency-level protest, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1993).

We deny the request for reconsideration.

Instrument first protested to DLA on March 5, 1993, and received the agency's response on March 11. Therefore, the subsequent protest to our Office should have been filed not later than March 25. Although the protester claimed to have protested to us by facsimile transmission on March 24, we had no record of receiving such a transmission; the first protest document we received was a letter dated March 24 from the protester's attorney--this letter was sent by regular mail and was received on March 31. Accordingly, we dismissed the protest as untimely.

In its reconsideration request, Instrument again asserts that on March 24 it submitted its protest by facsimile to our Office. Instrument notes that previously--before we dismissed its protest--it provided us with a copy of its facsimile machine's confirmation message which, according to Instrument, "evidences the fact that the letter was sent via facsimile on March 24, 1993." The confirmation message indicates a transmission of 2 pages from Instrument to our Office on March 24 at 2:17 p.m. Based on this confirmation message, Instrument argues that we must have misplaced its telefaxed transmission.

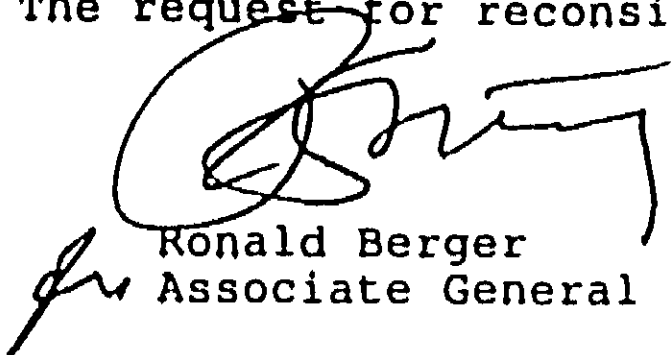
Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1980, 88-2 CPD ¶ 274.

Here, Instrument merely claims--as it did previously--that it protested to us by facsimile transmission on March 24 and disputes our finding that nothing in the record supports its allegation. We previously rejected Instrument's contentions since we have no record of receiving such a transmission. The facsimile activity report produced by our facsimile machine sequentially records each incoming facsimile transmission with the number of the sending station, the start time, the duration, and the number of pages in the transmission. The report for March 24 lists 38 transmissions; none of these transmissions occurred at 2:17 p.m. and none was sent from the protester's facsimile number. Additionally, there is no gap in the sequential numbering of the facsimile transmissions received on March 24. Consequently, we have no basis to find that we received Instrument's protest on March 24, and Instrument's repetition of its position does not justify reconsideration of our decision. R.E. Scherrer, Inc.--Recon., supra.

In any event, the confirmation message from Instrument's facsimile machine does not establish receipt of the protest by our Office on March 24. In a similar context, we have stated that a transmission record which is in the protester's control will not be considered to be definitive evidence of transmission, since it can be created or altered to support the protester's contentions. See Southern CAD/CAM, 71 Comp. Gen. 78 (1991), 91-2 CPD ¶ 453 (concerning facsimile transmission of proposal materials). We conclude that the same rule should apply here. Since Instrument has not submitted or cited any evidence outside of its control

which shows that its protest was transmitted to our Office on March 24, we have no basis to conclude that the protest was timely submitted.

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel